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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,039	12/10/2001	Dale Stevenson	TACOBEL.021C1	7108
20995	7590	04/22/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			MADSEN, ROBERT A	
		ART UNIT	PAPER NUMBER	
			1761	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/015,039	STEVENSON ET AL.
	Examiner Robert Madsen	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 2-8 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a)  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d)
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>December 12, 2001</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

#### **DETAILED ACTION**

1. Applicant's election with traverse of claim 1 in the Response filed January 23, 2004 is acknowledged. The traversal is on the ground(s) that in the parent application claims identical to pending claims 1,2,4, and 7 were included to a single grouping, into which claim 3 would also fall, and the claims are classified in the same class and subclass and would not amount to a serious burden. This is not found persuasive.
2. Applicant is reminded that the current pending application is 10/015,039, not 09/479,584, and for classification purposes, an apparatus with a chip fry lid (claim 1) and various chip fry lid forms (claims 2-4) should belong to the same class and subclass. However, the actual limitations recited claims 2-4 require a different search than claim 1. Claims 2-4 are related to claim 1 as subcombination/combination. The combination of claim 1 does not require the specifics of the subcombinations of 2-4, such as a wire frame, and claims 2-4 may have a separate utility other than a chip fry lid since, as claimed, they do not require a frying apparatus as recited in claim 1. For example, the lid of claim 2, as recited, could be used as part of a roasting pan (e.g. note item 30 of Figure 1 in Kemper (US 6131506). Additionally, any of lids of claims 2,3, or 4 could be used as an rack in a dishwasher (e.g. note items 34 and 35 are u-shaped in Figure 1 of James et al. (US 2710617), as a drainer basket( note U-shapes in Figure 3 of Planeta (US 2739715), or a storage basket (See Figures of Hoernig D396346).
3. With respect to grouping the process of preparing masa chips as recited claim 7, with the apparatus of claim 1, as evidenced by Reidenbach (US 2186345), the apparatus as claimed can be used in processes for frying potato chips.

4. Therefore, the requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Reidenbach (US 2186345).

7. Lid (item 6) has an array of alternating (i.e. as viewed from above in Figure 4) U-shaped (i.e. wire loops 42) which depend from the lid and comprise both long and short (i.e. as viewed in Figures 1 and Figure 3), since the inner ring of u-shaped prongs is elevated above the outer ring and the ends of the prongs are level (See Figures, Column 1, lines 1-10, Column 3, lines 17-38, Column 3, line 53 to Column 4, line 5).

***Conclusion***

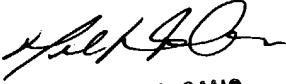
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rich (US 2457490) teaches u-shaped prongs attached to a lid. Zinn (US 859717), Maldonado (US 2957405), Pricket et al. (US 2719480), Kourim (US 1689395), and Hernkohl et al. (US 2450962) teach U-shaped prongs extending from a lid for securing and/or forming fried items in oil.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
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